

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TAMI W.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 2:21-cv-252-DWC

ORDER AFFIRMING  
DEFENDANT'S DECISION TO  
DENY BENEFITS

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's applications for supplemental security income ("SSI") and disability insurance benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 5. Plaintiff has filed an opening brief, ("Open") to which defendant filed a responsive brief ("Response"). *See* Dkts. 15, 20. This matter is fully briefed, without the optional reply.

The doctors in the record express widely varying opinions regarding plaintiff's work-related limitations. When reviewing this long medical record, the ALJ herein provided a detailed and thorough summary of the medical evidence and of the findings relevant to plaintiff's disability claims. Because substantial evidence supports the ALJ's findings, which provide

1 specific and legitimate rationale for the failure to credit fully the medical opinions from  
2 plaintiff's doctors, and for the other reasons discussed herein, this matter is affirmed.

### 3 FACTUAL AND PROCEDURAL HISTORY

4 On January 31, 2014, plaintiff filed an application for DIB and SSI, alleging disability as  
5 of December 31, 2009. *See* Dkts. 8-10, Administrative Record ("AR"), p. 24; *see also* Dkt. 8,  
6 AR, pp. 1-1825; Dkt. 9, AR, pp. 1826-3037; Dkt. 10, AR, pp. 3038-4570. The application was  
7 denied on initial administrative review and on reconsideration. *See* AR 24. A hearing was held  
8 before Administrative Law Judge ("ALJ") Eric Basse on January 27, 2017, after two  
9 postponements. *See id.* In a decision dated July 13, 2017, ALJ Eric Basse determined plaintiff to  
10 be not disabled, a decision appealed by plaintiff and reversed by the undersigned in the U.S.  
11 District Court for the Western District of Washington. *See* AR 14-35, 1635-45.

12 On July 21, 2020, plaintiff received another Administrative hearing before ALJ C.  
13 Howard Prinsloo ("the ALJ"), who issued a written decision denying plaintiff's claims on  
14 October 28, 2020. *See* AR 1547-65. The ALJ's October 28, 2020 written decision is the final  
15 decision of the Commissioner of Social Security ("Commissioner"). *See* AR 1-7; 20 C.F.R. §  
16 404.981, § 416.1481.

17 In plaintiff's Opening Brief, plaintiff maintains the ALJ erred by: (1) failing to consider  
18 properly the opinions of the treating and examining providers and provide adequate explanation  
19 for not according those opinions greater weight; and (2) concluding without substantial evidence  
20 in support plaintiff had the residual functional capacity ("RFC") to perform light work even  
21 limited to simple, routine tasks, and limited contact with the public, coworkers, and supervisors.  
22 "Open," Dkt. 15, p. 1. Defendant contends the ALJ reasonably evaluated the contradictory  
23 opinion evidence and the RFC is supported by substantial evidence. "Response," Dkt. 20, p. 1.

## STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of Social Security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

## DISCUSSION

### **I. The ALJ did not err when evaluating the medical evidence.**

Plaintiff contends the ALJ erred when evaluating the medical evidence, such as the medical opinion evidence provided by consultative psychiatric examiner, Dr Rahul Khurana MD; examining psychologist, Dr. David Widlan PhD; non-examining psychologist, Dr. Faulder Colby, PhD (AR 1017-20); and, treating physician, Dr. Frederica Overstreet, MD. Open, Dkt. 15, 3-16. Defendant contends the ALJ reasonably evaluated the contradictory opinion evidence. Response, Dkt. 20, pp. 1-11.

Because plaintiff filed her applications prior to March 27, 2017, the ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician or psychologist. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). However, when an opinion from an examining or treating doctor is contradicted by other medical opinions, the treating or examining doctor’s opinion can be rejected “for specific and legitimate reasons that are supported by substantial evidence in the record.” *Lester*, *Isupra*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v.*

1 *Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can accomplish this by “setting out a  
 2 detailed and thorough summary of the facts and conflicting clinical evidence, stating his  
 3 interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.  
 4 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)). That is what the ALJ did  
 5 here.

6 The Court notes defendant’s summary of the medical evidence, demonstrating its highly  
 7 contradictory nature:

8 *Gary Nelson, Ph.D. (non-examining [psychological doctor]):* [Plaintiff is limited to:]  
 9 simple, routine tasks; familiar, routine complex tasks; can maintain concentration,  
 10 persistence, and pace with normal breaks; superficial contact with public; fewer co-  
 workers; slow-paced workplace changes (internal citation to AR 150-52).

11 • *John Robinson, Ph.D. (non-examining [psychological doctor]):* reduced ability to  
 12 concentrate for extended periods of time impacts more detailed tasks (e.g., no  
 detailed work); “may” have reduced routine attendance but persists majority of time;  
 13 brief and superficial contact with public and co-workers; with proper time and  
 instruction, can adapt to highly competitive work environment (internal citation to  
 AR 131-33).

14 • *Fredrica Overstreet, M.D. (treating [medical physician]):* unable to communicate  
 due to psychological conditions (internal citation to AR 1004).

15 • *Rahul Khurana, M.D. (examining [medical physician]):* minimal difficulty with  
 16 simple instructions; moderate impairment with complex instructions and work-related  
 judgments; “extreme disability for sustained concentration [and] persistence;”  
 17 extreme difficulty with typical social interactions with public, supervisors, and co-  
 workers and in responding to work routine changes (internal citation to AR 1378-79).

18 • *Alan Breen, Ph.D. (examining [psychological doctor]):* nursing school curriculum is  
 too challenging, medical assistant career may be reasonable; will need a lot of  
 tutoring and mental health treatment to get through academic program (internal  
 citation to AR 1499-1500).

19 • *John Horton, M.D. (examining [medical physician]):* no opined work-related  
 limitations (internal citation to AR 1504-06).

20 • *David Widlan, Ph.D. (examining [psychological doctor]):* marked impairment in  
 21 adapting to routine work setting changes, communicating effectively in work setting,  
 and completing normal workweek without interruptions from psychologically-based  
 symptoms; many additional moderate limitations (internal citation to AR 1007).

22 • *Faulder Colby, Ph.D. (non-examining [psychological doctor]):* same as Dr. Widlan  
 (internal citation to AR 1018-20).

23 Response 2-3. Although not complete, this summary is accurate. (See internal citations).  
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1           **A. Consultative Psychiatric Examiner, Dr. Rahul Khurana, M.D.**

2           Dr. Khurana examined plaintiff on July 23, 2014. *See* AR 1376-80. As noted by plaintiff,  
3 Dr. Khurana completed his psychiatric consultative evaluation at the request of defendant. *See*  
4 Open, 4. Dr. Khurana took plaintiff's history and subjective reports regarding her symptoms, as  
5 well as her reports of her activities of daily living and her limitations. *See* AR 1376-78. For  
6 example, he noted her chief complaint was "'I'm here for a DSHS eval.,' [further noting  
7 plaintiff] presents for disability evaluation." *See* AR 1376. Dr. Khurana noted the history was  
8 "gathered mainly from patient; [however,] extensive records (a combination of psychotherapy  
9 notes, PCP notes and [plaintiff's] self-report) were also reviewed." *Id.*

10          Dr. Khurana noted plaintiff's report of "having very bad depression." *Id.* Dr. Khurana  
11 also references abuse and domestic violence, and plaintiff's reports of "PTSD symptoms." *See*  
12 *id.* Dr. Khurana also performed his own mini mental status exam (MMSE), noting plaintiff  
13 "scored 29/30 [and] lost [a] point for recall (but remembered the object when given multiple-  
14 choice)." AR 1378. For his assessment, Dr. Khurana diagnosed plaintiff with major depressive  
15 disorder, recurrent, severe without psychotic features; post traumatic stress disorder ("PTSD");  
16 panic disorder with agoraphobia; generalized anxiety disorder; and a history of alcohol abuse,  
17 with borderline personality traits. *See id.*

18          For his clinical summary, Dr. Khurana concluded plaintiff's prognosis was "poor to fair  
19 at best." *See id.* For his final plan and recommendations, Dr. Khurana indicated that he believed  
20 the "complexity of [plaintiff's] medical and psychiatric illnesses make it unrealistic for [plaintiff]  
21 to ever work again in any meaningful capacity." *See* AR 1379. Regarding specific work-related  
22 limitations, Dr. Khurana included the following:

23               [Plaintiff] has minimal difficulty with simple instructions. However, work-  
24 related judgment or carrying out more complex instructions is moderately  
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1 impaired secondary to depression and anxiety disorder (including because of  
2 loss of motivation, energy and concentration). [Plaintiff's] understanding is  
3 fairly good. However, [plaintiff] has extreme disability for sustained  
4 concentration and persistence. [Plaintiff's] illnesses also make typical social  
interactions (with public, supervisors, or coworkers) in the work environment  
extremely difficult. [Plaintiff] would also have extreme difficulty responding  
to changes in the work routine.

5 *Id.*

6 The ALJ discussed the opinions from Dr. Khurana in the written decision. *See* AR 1561.  
7 The ALJ noted this Court found previously Dr. Khurana's opinion had not been evaluated  
8 properly. *See id.*; *see also* AR 1638-43. The ALJ also specifically noted Dr. Khurana (on July 23,  
9 2014) "opined that it is 'unrealistic for [plaintiff] to ever work again in any meaningful  
10 capacity.'" *See* AR 1561.

11 As summarized by plaintiff, plaintiff "to returned to work in late 2017 with the assistance  
12 of the State Division of Vocational Rehabilitation as a job coach for people with disabilities at a  
13 Northwest Center, a nonprofit organization." Open, 3 (citing AR 1582). As noted by plaintiff,  
14 she "initially worked thirteen hours a week spread over three days, [then,][i]n the fourth quarter  
15 of 2019 her hours were increased to 20 to 25 hours a week [in which she] worked from one to six  
16 hours a day five days a week." *Id.* As acknowledged by plaintiff, plaintiff's "earnings at that  
17 point met the requirements for Substantial Gainful Activity." *Id.* (citing AR 1792).

18 In the written decision, at step one of the sequential disability evaluation process, the ALJ  
19 discussed plaintiff's earnings with specificity for the particular quarters in 2019 and 2020. *See*  
20 AR 1553. The ALJ noted the record did "not indicate that she worked under any special  
21 conditions or accommodations, or that [her] impairments limited her productivity or the quality  
22 of [her] work." *See id.* The ALJ therefore concluded that "this work activity is substantial gainful  
23 activity ['SGA']." *See id.* As the ALJ noted previously in the written decision, if "an individual  
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engages in SGA, she is not disabled regardless of how severe physical or mental impairments are and regardless of her age, education, and work experience.” AR 1551. However, if a claimant for disability “is not engaging in SGA, the analysis proceeds to the second step.” *See id.*

After finding plaintiff “engaged in [SGA] during the following periods: October 2019 to present,” *i.e.*, October 28, 2020, the ALJ then found “however, there has been a continuous 12-month period during which [plaintiff] did not engage in [SGA].” AR 1552-53 (citing 20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*). The remainder of the ALJ’s “findings addressed the period(s) [plaintiff] did not engage in [SGA].” AR 1553.

When evaluating the medical opinions of Dr. Khurana, the ALJ noted plaintiff “has since demonstrated the ability to work in a skilled position that involves interacting with others at substantial gainful activity levels, which contradicts Dr. Khurana’s conclusions regarding her ability to work,” citing Dr. Khurana’s opinion “it is ‘unrealistic for [plaintiff] to ever work again in any meaningful capacity.’” AR 1561. This finding of a contradiction between Dr. Khurana’s conclusions and plaintiff’s demonstrated ability to work in the noted position at SGA levels, albeit years later, is based on substantial evidence in the record. *See id.* Dr. Khurana indicated his opinion specifically applied to an infinite amount of years in the future, as he did not find it realistic for her to work again “ever.” *See id.* However, not only did she work again, but she worked at a skilled position, at SGA level. *See* AR 1553, 1556. The ALJ’s reliance on this contradiction is a specific and legitimate reason for the failure to credit fully Dr. Khurana’s opinions of “extreme” impairment of sustained concentration and persistence, social interactions in the workplace and responding to workplace changes. This rationale alone is sufficient.

The ALJ’s assignment of only little weight to the opinions of Dr. Khurana also had some support from Dr. Khurana’s MMSE, in which plaintiff scored 29/30 and completed number 30

with prompting, as cited by the ALJ, who found such “does not support the extreme limitations assessed” by Dr. Khurana. *See id.* Similarly, as discussed further throughout this Order, *see infra*, the ALJ’s finding “the extreme limitations assessed by Dr. Khurana are inconsistent with the record as a whole, which typically documents intact or nearly intact social functioning and concentration and does not show extreme limitations of her ability to adapt,” is a finding based on substantial evidence in the record. *See* AR 1561 (citing *e.g.*, Ex. 6F, p. 36, *i.e.*, AR 1056 ((June 17, 2014) “well -appearing,” and “very pleasant”); Ex. 11F, p. 24-29 *i.e.*, *e.g.*, AR 1530 ((January 3, 2017) “baseline; pleasant and cooperative; fair insight and judgment; logical and connected thought process”); Ex. 13F, p. 129, 384, *i.e.*, AR 2357 ((May 17, 2017) “breathing comfortably on room air” and “pleasant and cooperative”), AR 2612 ((October 12, 2016) “alert, healthy appearance, [no acute distress], pleasant and cooperative,” and alert and oriented “A & O”); Ex. 12F, p. 300 *i.e.*, (Dkt. 9) AR 2125 ((March 30, 2016) “[plaintiff] presents with continued anxiety and PTSD symptoms and difficulty regulating her anxiety,” but “Mental Status Examination .... Behavior/Activity: calm and cooperative; Speech: clear, coherent, fluent; [in context of:] Affect: anxious and depressed; Mood: anxious and depressed; Thought form: normal, logical, coherent, goal directed; Thought content: normal; Attention/concentration: alert; Memory: no apparent deficit; Insight/judgment: good insight and judgment”), Ex. 21F, p. 7, 12, 21, *i.e.*, (Dkt. 10) AR 4134 ((September 21, 2017) “ wake, alert, and oriented x 4 [who they are, where they are, when it is, why they are there] no apparent distress. Pleasant, cooperative. Psychological: mood is euthymic [within normal limits], affect is normal”, AR 4139 ((May 6, 2020) “in no apparent distress, [nothing else of note], NEUROLOGIC EXAM: higher cortical function; oriented to place, time, person; recent and remote memory (e.g. personal history) intact; attention span and concentration intact; language (spontaneous speech, naming



1 objects) intact; fund of knowledge (current events, past history, vocabulary) intact”), AR 4148  
2 ((June 23, 2020) “await, alert and oriented x4. No apparent distress. Pleasant and cooperative;  
3 psychologic: mood is euthymic [within normal limits], affect is normal”).

4 For the reasons stated and based on the record as a whole, the Court concludes the ALJ  
5 did not err when evaluating the medical opinion of Dr. Khurana.

6 **B. Examining Psychologist, Dr. David Widlan PhD**

7 Dr. Widlan examined and evaluated plaintiff on May 28, 2015. *See* AR 1005-16. Dr.  
8 Widlan took a brief history and noted plaintiff’s description of activities of daily living included  
9 attending school three days a week and using the bus; however plaintiff reported struggling in  
10 her first quarter at school. *See* AR 1005-06. Dr. Widlan noted plaintiff’s symptoms of depression  
11 and anxiety, including her reported nightmares, vigilance, startle and agitation, all severe, as well  
12 as her lack of energy/motivation, irritability and general dysphoria, which were reported as  
13 marked severity. *See* AR 1006. Dr. Widlan performed a mental status examination, in which  
14 plaintiff’s speech, appearance, and psychomotor behavior all were within normal limits, and she  
15 was cooperative. *See* AR 1008. However, plaintiff’s depression was marked, based on plaintiff’s  
16 self-reported testing, but her anxiety was moderate: she presented with a restricted affect. *See id.*;  
17 *see also* 1014-16. Dr. Widlan assessed plaintiff’s thought process and content; orientation;  
18 perception; memory; fund of knowledge; concentration; abstract thought; and, insight and  
19 judgment all were within normal limits. *See* AR 1008-09.

20 Dr. Widlan diagnosed plaintiff with post traumatic stress disorder, as well as major  
21 depressive disorder, recurrent, moderate to severe without psychotic features, in addition to  
22 physical diagnoses. *See id.* Regarding specific functional limitations, Dr. Widlan opined plaintiff  
23 suffered from marked limitations in her ability to adapt to changes in a routine work setting;  
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1 communicate and perform effectively in a work setting (a “social” limitation); and complete a  
2 normal workday and workweek without interruptions from psychologically based symptoms, in  
3 addition to a large number of moderate limitations. *See* AR 1007.

4 **1. Regular school attendance and use of public transportation**

5 The ALJ discussed the opinions of Dr. Widlan in the written decision and gave them little  
6 weight. *See* AR 1562. The ALJ found “Dr. Widlan’s examination findings do not support the  
7 marked limitations he assessed,” noting the many normal observations just cited above, *see*  
8 *supra*. AR 1562. Importantly, the ALJ also noted at plaintiff’s evaluation, plaintiff told Dr.  
9 Widlan about her regular school attendance and use of public transportation, as well as attending  
10 to her daily needs. *Id.* The ALJ concluded these noted findings “are inconsistent [with] marked  
11 social limitations, marked limitation of her ability to adapt, or marked difficulty completing a  
12 normal workday or workweek,” as opined by Dr. Widlan. *See id.* These findings are based on  
13 substantial evidence and entail specific and legitimate rationale for failing to credit fully the  
14 medical opinions of limitations by Dr. Widlan.

15 The Court also notes throughout the ALJ’s decision, as alluded to previously, *see supra*,  
16 Section I A, the ALJ noted plaintiff’s activities inconsistent with marked social limitations, as  
17 well as noting the plethora of notes throughout the treatment record of plaintiff’s normal mood  
18 and affect, and pleasant and cooperative behavior, also inconsistent with marked social  
19 limitations. For example, the ALJ earlier in the decision noted plaintiff “attended college classes  
20 and reported earning good grades in 2012 and 2013.” AR 1555 (citing Ex. 2F, p. 9, *i.e.*, AR 409  
21 (January 5, 2012: “[plaintiff] is proud of getting good grades last quarter and has started Spring  
22 Quarter classes”); Ex. 6F, p. 310, 338, *i.e.*, AR 1330 (April 3, 2013: “[plaintiff] is happy with  
23 studies and has a class at 8:00 AM and one at 10:00 AM []. [Plaintiff] feels affirmed by how well  
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1 she did last quarter, only missing 2 days in spite of all she is going through last year”), AR 1358  
2 (February 14, 2013: “[plaintiff] returns today stating that is doing better. School is going better  
3 and [plaintiff] is getting Bs in courses [;] has only missed one day this quarter”); *but see* AR  
4 1358 (February 27, 2013: Plaintiff “feels like [frequent nightmares are] interfering with school,  
5 feels disconnected in class and grades are slipping from A/B to C”). Although plaintiff faults the  
6 ALJ for pointing to plaintiff’s attendance in 2012 and 2013, calling it inexplicable, (Open, 12),  
7 plaintiff herself acknowledges she filed her applications for Disability Insurance Benefits and  
8 “Supplemental Security Income, alleging disability beginning December 31, 2009.” Open, 2  
9 (citing AR 258, 260). As noted by defendant, “at the hearing, plaintiff asked the ALJ to either  
10 find that there was a period of disability with the trial work period and suggested that ‘[i]n the  
11 alternative ... another possibility would be to find her eligible for the closed period of  
12 eligibility[;] that is, plaintiff did not officially amend her application to ask only for a closed  
13 period.” Response 9 (internal citation to AR 1578). The Court agrees with defendant “the ALJ  
14 did not err in considering the relevance of Dr. Widlan’s opinion across the entire relevant  
15 period.” *Id.*

16 Although plaintiff stated her grades deteriorated subsequently, the ALJ’s finding  
17 plaintiff’s reported contemporaneous school attendance, with use of public transportation, is  
18 inconsistent with Dr. Widlan’s opinions of marked social limitation in communications and  
19 performance at work is based on substantial evidence and provides specific and legitimate  
20 rationale for failing to credit fully Dr. Widlan’s opinions. As noted by the ALJ, plaintiff reported  
21 these activities to Dr. Widlan at the time of his evaluation. *See* AR 1562 (citing AR 1006).  
22 Although plaintiff is correct that her noted activities were not taking place in a work setting, the  
23 ability to use public transportation in order to attend school multiple times a week on a specified  
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(class) schedule not of her choosing “is such relevant evidence as a reasonable mind might accept as adequate to support” the finding by the ALJ of an inconsistency with Dr. Widlan’s opinion of marked social limitation. *See Biestek, supra*, 139 S. Ct. at 1154 (internal citations omitted) (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”).

## 2. Intact or nearly intact social functioning and concentration in the record

In addition, in the previous section, *see supra* Section I A, the Court already has noted the plethora of citations the ALJ provided when finding an inconsistency between “the extreme limitations assessed by Dr. Khurana [] [] with the record as a whole, which typically documents intact or nearly intact social functioning and concentration ....” *See* AR 1561 (citing *e.g.*, Ex. 6F, p. 36, *i.e.*, AR 1056 ((June 17, 2014) “well -appearing,” and “very pleasant”); Ex. 11F, p. 24-29 *i.e.*, *e.g.*, AR 1530 ((January 3, 2017) “baseline; pleasant and cooperative; fair insight and judgment; logical and connected thought process”); Ex. 13F, p. 129, 384, *i.e.*, AR 2357 ((May 17, 2017) “breathing comfortably on room air” and “pleasant and cooperative”), AR 2612 ((October 12, 2016) “alert, healthy appearance, [no acute distress], pleasant and cooperative,” and alert and oriented “A & O”); Ex. 12F, p. 300 *i.e.*, (Dkt. 9) AR 2125 ((March 30, 2016) “[plaintiff] presents with continued anxiety and PTSD symptoms and difficulty regulating her anxiety,” but “Mental Status Examination .... Behavior/Activity: calm and cooperative; Speech: clear, coherent, fluent; [in context of:] Affect: anxious and depressed; Mood: anxious and depressed; Thought form: normal, logical, coherent, goal directed; Thought content: normal; Attention/concentration: alert; Memory: no apparent deficit; Insight/judgment: good insight and judgment”), Ex. 21F, p. 7, 12, 21, *i.e.*, (Dkt. 10) AR 4134 ((September 21, 2017) “wake, alert, and oriented x 4 [who they are, where they are, when it is, why they are there] no apparent

1 distress. Pleasant, cooperative. Psychological: mood is euthymic [within normal limits], affect is  
2 normal”, AR 4139 ((May 6, 2020) “in no apparent distress, [nothing else of note],  
3 NEUROLOGIC EXAM: higher cortical function; oriented to place, time, person; recent and  
4 remote memory (e.g. personal history) intact; attention span and concentration intact; language  
5 (spontaneous speech, naming objects) intact; fund of knowledge (current events, past history,  
6 vocabulary) intact”), AR 4148 ((June 23, 2020) “await, alert and oriented x4. No apparent  
7 distress. Pleasant and cooperative; psychologic: mood is euthymic [within normal limits], affect  
8 is normal”).

9       It is true this citation list was not provided in the paragraph of the written decision  
10 discussing the medical opinion of Dr. Widlan, and instead is within the paragraph assessing Dr.  
11 Khurana’s medical opinion. *See* AR 1561-62. However, in the context of this record, and these  
12 particular findings by the ALJ regarding these particular doctors’ opinions, it is clear from the  
13 ALJ’s written decision as a whole, including the detailed and thorough discussion of the medical  
14 evidence, that this aspect of the record supports the ALJ’s providing only little weight to the  
15 opinions of DSHS consultant Dr. Widlan, as well as the ALJ’s finding of a contradiction  
16 between plaintiff’s social abilities and Dr. Widlan’s opinions of functional limitations in this  
17 regard. *See id.* “Magic words” on the part of an ALJ are not required, and this reviewing Court is  
18 “not deprived of [its] faculties for drawing specific and legitimate inferences from the ALJ’s  
19 opinion.” *See Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989). As noted previously, and  
20 as noted in plaintiff’s brief, an ALJ provides specific and legitimate reasons for failing to credit  
21 fully a contradicted medical opinion by “setting out a detailed and thorough summary of the facts  
22 and conflicting clinical evidence, stating his interpretation thereof, and making findings.”  
23 *Reddick, supra*, 157 F.3d at 725 (citing *Magallanes, supra*, 881 F.2d at 751). The ALJ did that.

### 3. Subsequent work at SGA

Finally, the ALJ noted plaintiff “has subsequently demonstrated the ability to work at [SGA], indicating that her conditions are not as limiting as assessed by Dr. Widlan.” AR 1562. This finding, too, is based on substantial evidence. The ALJ’s conclusion that overall, “Dr. Widlan’s opinions are not well-supported and are inconsistent with [plaintiff’s] demonstrated abilities” is a finding based on substantial evidence in the record.

For the reasons stated and based on the record as a whole, the Court concludes the ALJ’s findings related to the opinions of Dr. Widlan are based on substantial evidence, and further concludes they entail specific and legitimate rationale for the failure to credit fully and give only little weight to Dr. Widlan’s medical opinions.

#### C. Non-Examining Psychologist, Dr. Faulder Colby, PhD

Dr. Colby did not examine plaintiff, but as noted by plaintiff “was contracted by the Washington State DSHS in June 2014 to review Dr. Widlan’s opinion and the medical evidence on which it was based.” Open 13 (citing AR 1017-20). As noted by plaintiff, “Dr. Colby agreed with Dr. Widlan that the results of his evaluation indicated the plaintiff was markedly limited in her ability to adapt to changes in a routine work setting, communicate and perform effectively in a work setting and complete a normal workday and workweek without interruptions from psychologically-based symptoms.” *Id* (citing AR 1018). Plaintiff is correct that the ALJ provided no other explanation other than Dr. Colby “based’s opinions entirely on Dr. Widlan’s report, and his assessment mirrors Dr. Widlan’s conclusions [;] [t]herefor, Dr. Colby’s opinions are not persuasive for the same reasons as Dr. Widlan’s - they are not well supported and are inconsistent with the claimant’s abilities.” AR 1562.

1 This Court already has discussed the ALJ's rejection of the medical opinion from Dr.  
2 Widlan and found the provision of only little weight to Dr. Widlan's opinions to be based on  
3 specific and legitimate rationale supported by substantial evidence, *see supra*, Section I B.  
4 Plaintiff argues "if Dr. Widlan's opinion was indeed not supported by his examination, it was Dr.  
5 Colby's job to uses medical training to identify such an error [and] that Dr. Colby's opinion  
6 confirms Dr. Widlan's further demonstrates the failure of the ALJ' argument against Dr.  
7 Widlan." Open 14. However, the Court agrees with defendant, based on this record, and these  
8 particular opinions, "these opinions [of Dr. Widlan and Dr. Colby] should rise or fall together."  
9 Response 9.

10 Based on the rationale applied to the ALJ's provision of only little weight to the medical  
11 opinions of Dr. Widlan, and based on this Court's review of the medical evidence and the record  
12 as a whole, the Court concludes the ALJ provided specific and legitimate rationale based on  
13 substantial evidence in the record for the failure to credit fully the opinions of Dr. Colby, non-  
14 examining psychologist.

15 **D. Treating Physician, Dr. Frederica Overstreet, M.D.**

16 Plaintiff notes on May 29, 2014 Dr. Overstreet, plaintiff's primary care provider  
17 completed a physical assessment at the request of Washington State DSHS. Open 14. As noted  
18 by plaintiff, Dr. Overstreet opined plaintiff suffered from the diagnoses of depression, PTSD,  
19 bilateral hand pain, anxiety and asthma; and, plaintiff would be unable to perform even sedentary  
20 work. *See* Open (citing AR 1001, 1004). Plaintiff contends the ALJ erred when assigning little  
21 weight to Dr. Overstreet's medical opinion. Defendant contends the ALJ "considered and gave  
22 little weight to Dr. Overstreet's opined limitations for a specific and legitimate reason."  
23 Response 9-11 (citing AR 1560-61).

1 Defendant notes regarding “psychiatric limitations, Dr. Overstreet opined plaintiff has  
2 moderate to severe limitation in her ability to communicate due to depression, post traumatic  
3 stress disorder, and anxiety.” Response (citing AR 1004). Further noting “severe is defined as the  
4 inability to perform an activity, [defendant argues] so, Dr. Overstreet opined plaintiff is unable to  
5 communicate.” *Id* (internal citation to AR 1004 omitted). As the record reflects Dr. Overstreet  
6 opined plaintiff’s anxiety severely affected the ability to communicate at work, with severe being  
7 defined as the inability to perform that basic work activity, the Court finds defendant’s summary  
8 of that aspect of the record to be accurate. *See* AR 1004.

9 Regarding physical limitations, defendant notes Dr. Overstreet “opined plaintiff has  
10 marked restriction in ability to lift, carry, handle, push, and pull due to bilateral hand pain and  
11 cannot perform even sedentary work.” Response (citing AR 1001, 1004). Defendant contends the  
12 ALJ’s rationale for providing only little weight to Dr. Overstreet’s opinions is specific and  
13 legitimate and based on substantial evidence. For the reasons discussed below, the Court agrees.

14 Although plaintiff is correct Dr. Overstreet was plaintiff’s treating physician and her  
15 treatment records are part of the record, substantial evidence supports the ALJ’s finding in the  
16 written decision that on the form containing specific work-related limitations, “Dr. Overstreet did  
17 not provide a basis for [her] opinion [of severe limitation].” AR 1560 (citing AR 1000-1004).

18 The ALJ noted additionally in the written decision: “Dr. Overstreet cited [plaintiff’s]  
19 hand pain and neuropathy, asthma, and mental health conditions, but did not explain how these  
20 diagnoses correlate to the extreme limitations she assessed.” AR 1560. The ALJ found Dr.  
21 Overstreet’s specific work-related limitations opinion “does not include any examination  
22 observation or other objective findings to support an inability to perform sedentary work.” AR  
23 1560-61. The ALJ concluded: “Overall, this assessment is brief, conclusory, and inadequately  
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1 supported, and the undersigned gives it little weight.” AR 1561. In the context of this record, the  
2 Court concludes the ALJ offered specific and legitimate findings based on substantial evidence.

3 Plaintiff argues: “with regard to the Plaintiff’s depression, PTSD and anxiety, [Dr.  
4 Overstreet] wrote [plaintiff was] ‘in therapy and on anti—depressants[;]’ for her hand pain Dr.  
5 Overstreet wrote ‘hand specialists, rheumatologists, injections.’” Open 14-15 (quoting AR 1000).  
6 However, like Dr. Overstreet, plaintiff does not explain how being in therapy, on antidepressants,  
7 visiting specialists and rheumatologists and receiving injections explains how plaintiff was  
8 limited to only sedentary work. *See id.* Although plaintiff argues this information from the  
9 treatment record “contradicts the ALJ’s assumptions,” instead, the Court finds persuasive  
10 defendant’s argument substantial evidence supports the ALJ’s finding in the written decision Dr.  
11 Overstreet’s specific work-related limitations opinion “does not include any examination  
12 observation or other objective findings to support an inability to perform sedentary work.” AR  
13 1560-61.

14 Plaintiff’s direction to the record documenting she was visiting specialists, reporting  
15 bilateral hand pain, in therapy and receiving antidepressants and injections does not deprive the  
16 ALJ’s finding of substantial evidence Dr. Overstreet’s “assessment is brief, conclusory, and  
17 inadequately supported.” AR 1561. Although there may not be a requirement that an opinion  
18 contain supporting basis within it, the lack of sufficient supporting bases within a form or  
19 anywhere in the treatment record is an appropriate basis and a specific and legitimate rationale  
20 based on substantial evidence for an ALJ’s failure to credit fully a medical opinion. *See*  
21 Response 10 (citing *Chaudry v. Astrue*, 688 F.3d 661, 671 (9<sup>th</sup> Cir. 2012) (“the ALJ need not  
22 accept the opinion of any physician, including a treating physician, if that opinion is brief,  
23 conclusory, and inadequately supported by clinical findings” (other citations omitted))).

1 Similarly, although plaintiff cites to isolated instances in the record showing clinical findings of  
2 inflammatory markers and positive Phalen's and Tinel's tests, as well as EMG studies consistent  
3 with carpal tunnel syndrome, (Open 16 (citing AR 1056-57)), defendant persuasively argues  
4 plaintiff simply is "requesting an alternative interpretation of the evidence," as the treatment note  
5 cited "indicates plaintiff presented as pleasant and well-appearing with only mild findings in the  
6 bilateral wrists, full strength, no muscle atrophy, and intact neurological findings." Response  
7 10-11 (citing AR 1056-57); *see e.g.*, AR 1056 ("the hands, wrists, elbows, shoulders, hips, knees,  
8 ankles and feet were evaluated today [and] no evidence of synovitis in any joints [and] she has  
9 mildly decreased bilateral wrist flexion about 5 to 10° due to discomfort with full [range of  
10 motion]. The rest of her joints have normal range of motion ... [Although tender] she has 5/5  
11 strength in all major muscle groups. No evidence of muscle atrophy. No evidence of  
12 contractures. Positive Phalens bilaterally, + Tinel's on the right only"). *See also Thomas v.*  
13 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (It is not the job of the court to reweigh the  
14 evidence: If the evidence "is susceptible to more than one rational interpretation," including one  
15 that supports the decision of the Commissioner, the Commissioner's conclusion "must be  
16 upheld") (citing *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599, 601 (9th Cir. 1999)).

17 For the reasons stated and based on the record as a whole, the Court concludes the ALJ's  
18 provision of little weight to the medical opinion of Dr. Overstreet is based on specific and  
19 legitimate rationale supported by substantial evidence.

## 20 **II. The ALJ did not err when evaluating plaintiff's RFC.**

21 Plaintiff contends that the ALJ erred by failing to determine an RFC supported by  
22 substantial evidence as limitations beyond those adopted by the ALJ are indicated in the record  
23 that if adopted, would preclude maintenance of substantial gainful activity. Plaintiff contends the  
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1 ALJ's adopted RFC inappropriately relies on the opinions of defendant Agency's own medical  
2 consultants as opposed to medical opinions from plaintiff's treating, examining, or other  
3 consulting doctors. *See* Open 16-18. Defendant contends plaintiff again simply is requesting an  
4 alternative interpretation of the evidence "and fails to identify any harmful error." Response 11  
5 (citing Open 16-18). For the reasons discussed herein, the Court finds defendant's arguments  
6 persuasive.

7 If the ALJ cannot determine whether a claimant is disabled based on a claimant's current  
8 work activity or on medical factors alone and a claimant has a severe impairment, a review is  
9 made of the claimant's residual functional capacity ("RFC"). *See* Social Security Ruling "SSR"  
10 96-8p, 1996 SSR LEXIS 5 at \*3-\*4, 1996 WL 374184. As noted by the Ninth Circuit, "Social  
11 Security Regulations define [RFC] as the 'maximum degree to which the individual retains the  
12 capacity for *sustained* performance of the physical-mental requirements of jobs.'" *Reddick v.*  
13 *Chater*, 157 F.3d 715, 724 (9th Cir. 1998)) (quoting 20 C.F.R. § 404, Subpart P, App. 2 §  
14 200.00(c)) (emphasis added by Ninth Circuit); *see also* SSR 96-8p, 1996 SSR LEXIS 5 at \*5.  
15 [RFC] is the most a claimant can do despite existing limitations. *See* 20 C.F.R. §§ 404.1545(a),  
16 416.945(a); *see also* 20 C.F.R. § 404, Subpart P, App. 2 § 200.00(c).

17 In the written decision, the ALJ found as follows regarding plaintiff's RFC:

18 [Plaintiff] has the RFC to perform light work with some additional limitations.  
19 [Plaintiff] can occasionally climb ladders, ropes, or scaffolds and can  
20 occasionally crawl. She can frequently push or pull hand controls, handle, and  
21 finger. [Plaintiff] must avoid concentrated exposure to respiratory irritants and  
22 hazards. [Plaintiff] can perform simple, routine tasks and familiar learned  
23 detailed tasks. She can interact superficially with the general public and small  
24 groups of co-workers.

25 AR 1556-57 (internal citation to 20 CFR 404.1567(b) and 416.967(b)).

1 Plaintiff argues the ALJ's RFC incorrectly fails to include limitations, and notes the  
2 "erroneous dismiss[al] [of] the opinions of treating physician Dr. Overstreet, consultative  
3 examiner Dr. Khurana, examining psychologist Dr. Widlan and Dr. Colby." Open 17. However,  
4 the Court already has found these arguments to be unpersuasive, and has upheld the ALJ's  
5 failure to credit fully the opinions from these doctors, *see supra*, Section I. Plaintiff next argues  
6 "[o]ther evidence in the record supports a finding that the plaintiff suffered more serious social  
7 and health limitations than concluded by the ALJ [, noting] [t]wo mental health evaluations were  
8 performed as a part of the plaintiff's involvement with the Division of Vocational Rehabilitation,  
9 and her efforts to return to school and work." *Id.* Plaintiff notes in mid-2016, Dr. Alan Breen,  
10 PhD, clinical psychologist, evaluated plaintiff, made various diagnoses, and recommended  
11 against plaintiffs "proposal that she attend nursing school, opining that it would be too stressful  
12 and '... create further mental health problems.'" *Id.* (quoting AR 1500). Plaintiff acknowledges  
13 Dr. Breen "observed that the cognitive testing did not reveal 'dramatic neurocognitive  
14 difficulties,'" but highlights Dr. Breen's opinion "[f]ar more significant are the emotional  
15 problems which are profound and dense." *Id.* (quoting AR 1499). Plaintiff points out Dr. Breen  
16 characterized plaintiff's mood difficulties as "very significant," despite medication leaving her in  
17 need of "a lot of help." *Id.* Although these may be an accurate reflection of the record, defendant  
18 persuasively argues plaintiff has not identified any harmful error. *See* Response 11-12. The Court  
19 notes the ALJ provided "some weight" to the opinions of consultative examiner Dr. Breen. *See*  
20 AR 1561.

21 Plaintiff also notes the assessment on September 7, 2016 from psychiatrist Dr. John  
22 Horton at the request of Division of Vocational Rehabilitation. Open 17 (citing AR 1501).  
23 Diagnosing plaintiff with PTSD, major depression, panic disorder, social anxiety disorder and  
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1 alcohol use disorder, Dr. Horton noted plaintiff remained symptomatic with her depression,  
2 anxiety and PTSD despite medication treatment. *See id* (citing AR 1505). Importantly, plaintiff  
3 acknowledges that “neither Dr. Breen nor Dr. Horton offered or were asked to offer assessment  
4 of work limitations for the performance of SGA[; but argues] their findings are entirely  
5 consistent with those of Dr. Khurana and Dr. Widlan and do not suggest that the plaintiff was  
6 capable of full-time gainful work activity at the time of their assessments.” *Id.* at 18. Plaintiff  
7 argues the ALJ “clearly marshaled selective evidence in order to support his conclusions,” and  
8 would have had to include more significant unspecified limitations in formulating his RFC. *Id.*

9 Defendant argues the ALJ “noted the assessments were consistent with his own decision,  
10 as well as plaintiff’s return to work[; and,] indeed, Dr. Breen actually opined that her previous  
11 work as a medical assistant would be more appropriate than a nursing degree.” Response 12  
12 (citing AR 1499-1500, 1561). Defendant argues the Court should decline plaintiff’s request to  
13 reweigh the record as regardless of whether the noted opinions are consistent with other  
14 opinions, the “ALJ’s analysis is proper, and plaintiff establishes no error, let alone a harmful  
15 one.” *Id.*

16 Based on the record as a whole, the Court finds defendant’s argument to be persuasive.  
17 *See id.* As noted by defendant, Dr. Breen suggested plaintiff’s return to work as a medical  
18 assistant would be reasonable, even though he opined it “is not clear from this assessment that  
19 [plaintiff] has the coping skills, stress management capabilities, or personal stability to handle  
20 the challenges of the nursing school prerequisites and then nursing school.” Response 12; *see*  
21 *also* AR 1499. Furthermore, as noted by defendant, plaintiff has not identified any specific work  
22 related opinions not are not included within the RFC that should be based on these opinions, but  
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1 instead appears to argue that this evidence supports the adoption of the work-related limitations  
2 opined by Drs. Khurana and Widlan.

3 However, the Court already has reviewed this medical evidence provided by Drs.  
4 Khurana and Widlan and upheld the ALJ's failure to adopt it in full, *see supra*, Section I.  
5 Furthermore, it is not the job of the court to reweigh the evidence. At best, plaintiff is offering an  
6 alternative interpretation of the evidence, potentially also supported by substantial evidence.  
7 However, if the evidence "is susceptible to more than one rational interpretation," including one  
8 that supports the decision of the Commissioner, the Commissioner's conclusion "must be  
9 upheld." *Thomas, supra*, 278 F.3d at 954 (citing *Morgan, supra*, 169 F.3d at 599, 601).

10 CONCLUSION

11 The ALJ provided a thorough and detailed discussion of the long medical record in this  
12 matter. The ALJ provided specific and legitimate rationale supported by substantial evidence for  
13 the medical opinions that were not adopted, including work-related limitations opined that were  
14 not included into the residual functional capacity.

15 Based on the foregoing discussion, the Court concludes the ALJ properly determined  
16 plaintiff to be not disabled. Therefore, the ALJ's decision is affirmed.

17 Dated this 27th day of January, 2022.

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19 David W. Christel  
20 United States Magistrate Judge  
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